

**RICHARD A. SMITH, WSBA 15127**

## SMITH LAW FIRM

314 No. Second Street

Yakima, WA 98901

Attorney for Defendant

Donovan Cloud

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON  
(Honorable Salvador Mendoza, Jr.)**

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.  
DONOVAN CLOUD,  
Defendant.

) NO. 1:19-CR-02032-SMJ-2  
)  
) REPLY TO THE GOVERNMENT'S  
) RESPONSE TO MOTION FOR BILL  
) OF PARTICULARS [ECF 100]  
)  
)

**TO:** Clerk of U.S. District Court, Eastern District of Washington

**TO:** Thomas J. Hanlon, Assistant United States Attorney

**COMES NOW** DONOVAN CLOUD by and through his attorney of record, Richard A. Smith of *Smith Law Firm*, and submits this Reply to the Government's Response to the Defendant's Motion for a Bill of Particulars [ECF 100].

The Government submits that the bill of particulars is unnecessary because: (1) kidnapping on an Indian reservation is a general intent crime; (2) an Indictment is not

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TO MOTION FOR BILL OF PARTICULARS  
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1 insufficient by reason of the omission of the words “and held”; and (3) an Indictment  
 2 is sufficient even though it does not charge that the person kidnapped was held “for  
 3 ransom or reward or otherwise” (ECF 100, page 5.)

4 Whether a bill of particulars is appropriate or necessary does not turn on the  
 5 factors cited by the Government. As noted in Mr. Cloud’s motion [ECF 95] being  
 6 “held” is the very essence of kidnapping and the statutory language “holds for ransom  
 7 or reward or otherwise” is not surplusage. *Chatwin v. United States*, 326 U.S. 455  
 8 (1946); *Hayes v. United States*, 296 F.2d 657 (8<sup>th</sup> Cir. 1961); *Clinton v. United States*,  
 9 260 F.2d 824 (5<sup>th</sup> Cir. 1958). Here, the Government has failed to even include the  
 10 statutory language in its indictment.

11  
 12 The Government states that it has provided over 4,000 pages of discovery.  
 13 However, none of the discovery provided clarifies the foundation which the charge  
 14 rests upon. A bill of particulars identifying the alleged “holding” and motive and  
 15 purpose of the same is particularly appropriate in this case given the similarity of  
 16 facts and circumstances regarding the Government’s charges of carjack and kidnap.  
 17

18 DATED this 24th day of September, 2019.

19 Presented by:  
 20

21                   /s/ Richard A. Smith  
 22 RICHARD A. SMITH, WSBA 15127  
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28  
 29  
 30 REPLY TO THE GOVERNMENT’S RESPONSE  
 31 TO MOTION FOR BILL OF PARTICULARS  
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1  
2                   CERTIFICATE OF SERVICE  
3

4                   I hereby certify under penalty of perjury of the laws of the State of Washington  
5                   that on September 24, 2019, I electronically filed the foregoing with the Clerk of the  
6                   Court using the CM/ECF System which will send notification of such filing to all  
7                   parties.  
8

9                   */s/ LUGENE M. BORBA*  
10                  LUGENE M. BORBA  
11                  Legal Assistant, Smith Law Firm  
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30                  REPLY TO THE GOVERNMENT'S RESPONSE  
31                  TO MOTION FOR BILL OF PARTICULARS  
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